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Vice President, General Counsel

June 19, 1998

U. S. Department of Transportation
Federal Highway Administration
Docket Clerk, U.S. DOT Dockets
Room PL-401
400 Seventh Street, SW
Washington, DC. 20590-0001

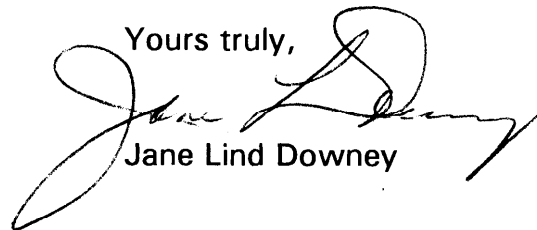
DEPT. OF TRANSPORTATION
DOCKET SECTION
98 JUN 22 PM 12:30

RE: Docket No. FHWA-98-3706, ⁴¹RIN 2125-AD52, Hours of Service of
Drivers; Supporting Documents, April 20, 1998

Dear Sir/Madam:

The American Moving and Storage Association hereby submits the
enclosed comments in response to the above-referenced notice of proposed
rulemaking.

Yours truly,


Jane Lind Downey

Encl

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION
U. S. DEPARTMENT OF TRANSPORTATION

FHWA DOCKET NO. MC-98-3706, RIN **2125-AD 52**
HOURS OF SERVICE OF DRIVERS;
SUPPORTING DOCUMENTS
NOTICE OF PROPOSED RULEMAKING
APRIL 20, 1998

COMMENTS OF THE
AMERICAN MOVING AND STORAGE ASSOCIATION

AMERICAN MOVING AND STORAGE ASSOCIATION
1611 Duke Street
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JOSEPH M. HARRISON
President

Jane Lind Downey
Vice President & General Counsel

DATED: June 19, 1998



DEPT OF TRANSPORTATION
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BEFORE THE FEDERAL HIGHWAY ADMINISTRATION
U. S. DEPARTMENT OF TRANSPORTATION

COMMENTS OF
AMERICAN MOVING AND STORAGE ASSOCIATION

Hours of Service of Drivers; Supporting Documents
FHWA Docket No. MC-98-3706
RIN 2125-AD52
Notice of Proposed Rulemaking
Request for Comments
63 Fed. Reg. 19457
April 20, 1998

FOREWARD

These comments are submitted by the American Moving and Storage Association, Inc. (AMSA formerly known as the American Movers Conference) and the AMSA Safety Management Council in response to the above referenced NPRM Request for Comments. AMSA is the national trade association for the household goods moving industry and is also affiliated with the American Trucking Associations, Inc. AMSA has approximately 3,500 members nationwide and represents a broad spectrum of the industry on safety regulatory matters, including national van lines, their affiliated agents, and independent regional and interstate carriers.

INTRODUCTION

FHWA proposes amending driver hours-of-service (**HOS**) recordkeeping regulations to require a supporting document auditing system that all motor carriers would use to support the accuracy of the drivers' Records of Duty Status (RODS). The proposal would allow carriers to maintain internal self-monitoring auditing systems as long as they could be shown to be effective in verifying RODS accuracy. A written explanation in manual or handbook form describing the self-monitoring system would have to be available for inspection by FHWA or state enforcement personnel and include a description of how the carrier obtains, audits and stores inspected supporting documents, how many violations have been found and what corrective actions have been taken as a result. If a carrier failed to have a **self-monitoring** system or it was deemed deficient, FHWA could require access to a vast array of documents generated or received by carriers and drivers in the normal course of business that may be related to the beginning and ending of all trips as well as the times and locations of intermediate operations. The use of electronic recordkeeping methods is proposed as a preferred alternative to paper supporting document records.

COMMENTS OVERVIEW

While concurring with the basic premise of the proposal that would allow flexibility for carriers to establish self-monitoring systems for verification of RODs, AMSA has fundamental concerns about some of the underlying assumptions FHWA has expressed in this NPRM about current carrier systems. Of more immediacy, however, we question the timeliness of proposing new recordkeeping requirements for HOS and RODS purposes at this time.

Although mindful of **FHWA's** federal statutory mandate to prescribe regulations in this safety compliance area as the result of a provision in the Hazardous Materials Transportation Authorization Act of 1994, it would seem that the statutory mandate in the ICC Termination Act of 1995 requiring FHWA to revamp the general HOS requirements would take precedence. It is our firm belief that FHWA should not be promulgating new recordkeeping rules to support general **hours-of-service** requirements that are in the process of being revised in another FHWA rulemaking. (Docket No. MC 96-28, RIN **2125-AD93**, ANPRM, 1 **1/5/96**). As a practical matter, FHWA should first determine the basic HOS rules before addressing the elements for a support system to verify compliance with those requirements.

Nonetheless, we will take this opportunity to comment on some of the issues raised in the subject NPRM, particularly as they relate to assumptions FHWA is making with respect to current practices involving the verification of RODS in the household goods moving industry. Of concern as well to our Safety Management Council is what parameters would be used to determine the effectiveness of a carrier's self-monitoring system. The proposal does not provide an objective means for carriers to judge whether their internal system would be found acceptable in the aftermath of an audit. We are also concerned that the independent contractor status of the van operator fleets in the moving industry may be negatively impacted by new carrier demands to relinquish an operator's business receipts.

For the record, AMSA supports the comments and position of the American Trucking Associations regarding this NPRM; however, **AMSA's** comments detailed herein will be confined to those elements of the proposal that are of primary importance to the household goods moving industry.

ASSUMPTION THAT CURRENT SYSTEMS MEET PROPOSED
REQUIREMENTS IS NOT ACCURATE

FHWA makes the statement in the proposed rulemaking that ***“most trips produce, or could with relative ease produce, a document to verify the time and place of the driver and mileage of the vehicle at the beginning and completion of each work day.”*** (63 Fed. Reg. 19460) According to FHWA, the proposal would require a carrier to have a self-monitoring system to verify the accuracy of ***“the beginning, intermediate, and ending times of each working day on each trip, as well as beginning, ending and intermediate mileage for each trip.”*** (Id.) Unfortunately, documents backing up the time, driver location and mileage information for every trip and driver are not reliably available on a regular basis, nor would it be cost-effective or feasible to try to obtain them.

Many of the documents produced in the normal course of business cannot be used to verify drivers HOS and RODS as they do not include specific information relating to time, date and location. Household goods carriers do not currently collect nor could they ***“with relative ease produce”*** specific documents to verify details relating to the beginning, intermediate or ending times of each working day or each trip as FHWA claims. Although drivers usually report mileage to the carrier they are leased to when a vehicle enters or leaves a state, this is for the carrier's reporting purposes, and there are no supporting documents to verify point to point locations nor any that would capture mileage and fuel on a daily or trip basis.

We believe it is evident that the proposal as described would require significant changes to current systems and impose new recordkeeping requirements. FHWA states that it ***“does not believe it should impose additional stringent record-collection and maintenance requirements on motor carriers and drivers, when most motor carriers already have such svstems and are successful& monitoring and enforcing the regulations.”*** (63 Fed. Reg. 19459) The foregoing statement

assumes, erroneously, that carriers have access to documents that meet the standards described above. If adopted, however, the proposed requirements would actually create burdensome new requirements difficult if not impossible of compliance.

Because of the irregular nature of the moving business, the intermittent nature of van line/agent operations, and the wide use of independent contractor van operators, household goods carriers utilize different verifying documentation than other trucking industry segments do. A single dispatch often encompasses a number of days and involves several shipments. In other words, drivers and vehicles do not generate regular documentation to support individual trips.

While carriers generally enter all log information into a system, verification of individual logs is based on documents such as roadside inspection and accident reports. Supporting information that van operators submit with logs can be used for verification only if date and time stamped.

In a typical household goods situation, a major carrier will process more than a million driver logs every year. Van Operators and employee drivers submit RODS information along with accompanying documents that are required for the carrier's business corporate, and federal and state tax purposes, i.e. fuel receipts, roadside inspection documents, plus other documents relative to expenses reimbursable by the carrier. While all driver logs can be audited for HOS compliance on an automated system, verification of individual RODS must be accomplished manually. Information is verified by comparison to various business records that may contain references to time and location. However, documentation is sporadic and not very reliable with respect to time and location elements. Household goods carriers simply do not have the requisite documents to support all the specific information that is assumed by FHWA in this NPRM.

FHWA places major emphasis on the use of electronic tracking systems in place of paper documents. Electronic tracking systems are not a viable alternative at this time for the moving industry because of the cost associated with the devices and the number of small business movers who represent a significant percentage of the household goods industry and the reliance on independent contractor van operators.

THREAT TO INDEPENDENT CONTRACTOR STATUS

The independent contractor status of moving van operators may be seriously compromised by the new recordkeeping requirements of this proposal. Carriers are constrained from collecting certain business documents from van operators because of the operator's own need to retain original documentation for individual business purposes. Under this proposal, demands would have to be made for documents retained by contractors for their own business expenses, such as toll tickets. New reporting systems would have to be developed that would result in a dangerous and generally unacceptable level of control over a contractor's daily activities.

PROVIDING AN OBJECTIVE WAY TO MEASURE THE "EFFECTIVENESS" OF FUTURE SELF-MONITORING SYSTEMS

FHWA should establish practical, objective guidelines for judging the effectiveness of a carrier's self-monitoring system so that a carrier would be able to periodically test its internal system and know with some certainty that it is operating within acceptable parameters. A carrier is put in an extremely difficult situation from a management standpoint if it does not have any way of objectively measuring its RODS monitoring system until an inspector arrives to do a safety audit. Assigning a critical "acceptability parameter", such as errors found in no more than 10% of all randomly selected records during a test period, would give carrier personnel a means of keeping systems functioning effectively.

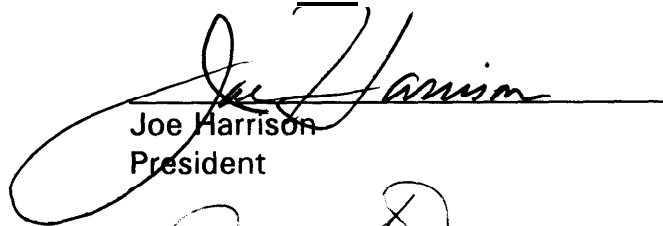
CONCLUSION

We hope that FHWA will not move forward with this proposal for new supporting document requirements at this time, but rather wait until the underlying regulatory structure for future driver HOS has been finalized. Although some type of prescriptive rules will probably form the basis for future HOS requirements, the approach may be radically different. The one thing that everyone concerned with this area of safety compliance can agree on is that the current HOS regime is outmoded and needs to be totally revamped. Scientific research still ongoing indicates that carriers will need to concentrate more in the future on fatigue management than any aspects of compliance. Recordkeeping to support new requirements may therefore be far different than they are today. Meeting a statutorily assigned deadline that is already past due should not be used by FHWA to justify an untimely regulatory exercise.

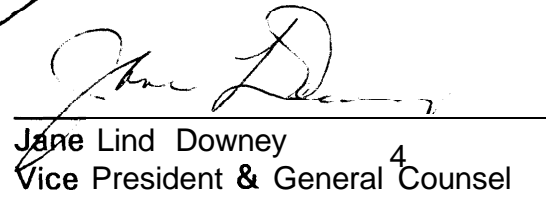
FHWA should also revise any approach taken with respect to HOS supporting documentation requirements to assure that it reflects a realistic means of compliance by carriers. Documents generated in the ordinary course of the moving business simply do not regularly and reliably contain the specific information that FHWA proposes to require. More reasonable methods of verifying records and an objective way for carriers to judge the effectiveness of their **self**-monitoring systems should be developed, FHWA should also analyze the impact of requiring carriers to exert more control over the daily activities of independent contractor van operators by making demands for documents that the contractors have heretofore retained for their own business purposes.

Respectfully submitted,

AMERICAN MOVING AND STORAGE
ASSOCIATION



Joe Harrison
President



Jane Lind Downey
Vice President & General Counsel⁴

DATED: JUNE 19, 1998